



**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534**

October 7, 2007

C.E. Hackett
26 Sullivan Bend Road
Elmwood, TN 38560

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7099 3400 0014 0976 2322

**Subject: DIRECTOR'S ORDER NO. WPC07-0213
C.E. HACKETT PROPERTY
SMITH COUNTY, TENNESSEE**

Dear Mr. Hackett:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

Vojin Janjic, Manager
Enforcement and Compliance Section

VMJ:BPB

cc: DWPC – EFO-Cookeville
DWPC – Compliance File
OGC

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
C.E. HACKETT)	
)	
)	
RESPONDENT)	CASE NO. WPC07-0213
)	

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Tennessee Division of Water Pollution Control (hereinafter the "director" and the "division" respectively) by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "commissioner" and the "department" respectively).

II.

C.E. Hackett (hereinafter the "Respondent") is a resident of the State of Tennessee, and is the owner of the property located at 177 JMZ Drive, Gordonsville, Smith County (hereinafter "the site"). Service of process may be made on the Respondent at 26 Sullivan Bend Road, Elmwood, Tennessee 38560.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 et seq., the Water Quality Control Act, (hereinafter the “Act”) has occurred, or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the Official Compilation Rules and Regulations of the State of Tennessee, Chapters 1200-4-3 and 1200-4-4 (hereinafter the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the Director of the Division of Water Pollution Control any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a “person” as defined at T.C.A. §69-3-103(20) and, as herein described, has violated the Act.

V.

Mulherrin Creek, referred to herein, is “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state are classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, “Use Classifications for Surface Waters,” is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, these waters are classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

VI.

Tennessee Code Annotated §69-3-108(c) requires any person operating a sewerage system to obtain a State Operating Permit (SOP). A SOP may be obtained by submitting a Notice of Intent (NOI).

FACTS

VII.

On July 6, 2007, division personnel from the Cookeville Environmental Field Office (CK-EFO) investigated a complaint regarding a sewage overflow at 173 JMZ Drive, Gordonsville (hereinafter the “parcel”). Division personnel observed evidence of previous sewage overflows and determined that a privately owned pump station located at the site, which serves this parcel, was not supplied with electrical power.

VIII.

On July 13, 2007, the division issued a Notice of Violation (hereinafter "NOV") to Mr. Johnny Cowan, owner of the parcel on which the sewage overflow had occurred. The NOV instructed Mr. Cowan to submit a Corrective Action Plan (CAP) to the division by July 27, 2007. The CAP was to include but not be limited to: The operational improvements regarding collection system repair, e.g., a pump system approved by the City of Gordonsville and a diagram of the onsite construction illustrating the pump station location.

IX.

August 15, 2007, Mr. Cowan submitted a copy of the deed of trust for the parcel, which indicated that the pump station on the site owned by the Respondent, was to continue to service the parcel.

X.

On August 23, 2007, the division issued a NOV to the Respondent for the violation noted during the July 6, 2007, complaint investigation. The Respondent was instructed to restore electrical power to the pump station to prevent further overflows and to submit, by August 31, 2007, a response detailing the activities and methods to be used to prevent additional violations.

XI.

On August 27, 2007, the Respondent contacted CK-EFO personnel and stated that he would not submit a written response and would not restore the electrical power to the pump station.

XII.

On September 14, 2007, division personnel returned to the site and noted that untreated sewage was overflowing from the pump station and from a cleanout on the adjacent parcel. It appeared that electrical service to the pump station had not been restored.

XIII.

During the course of investigation, the division incurred DAMAGES in the amount of TWO HUNDRED EIGHTY EIGHT DOLLARS AND FORTY EIGHT CENTS (\$288.48).

VIOLATIONS

XIV.

By operating a collection system without an SOP, the Respondent has violated T.C.A. §69-3-108(c), which states:

Any person operating or planning to operate a sewerage system shall file an application with the commissioner for a permit or, when necessary, for modification of such person's existing permit. Unless a person holds a valid permit, it is unlawful to operate a sewerage system.

ORDER AND ASSESSMENT

XV.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. The Respondent shall, immediately upon receipt of this Order, take all necessary measures to prevent additional discharges of untreated sewage from the collection system.
2. The Respondent shall, within THIRTY (30) DAYS of receipt of this Order, submit to the division, for review and approval, a plan detailing necessary repairs, maintenance and operational procedures of the collection system that will be implemented in order to prevent additional untreated sewage overflows. This plan should be submitted to the Water Pollution Control manager in the CK-EFO, at 1221 South Willow Avenue, Cookeville, TN 38506. The Respondent must correct any deficiencies the division finds upon review of the plan and the corrected plan should be resubmitted to the division within 30 days of notification of the deficiencies.

3. The Respondent shall pay DAMAGES to the division in the amount of TWO HUNDRED EIGHTY EIGHT DOLLARS AND FORTY EIGHT CENTS (\$288.48).
4. The Respondent shall pay a CIVIL PENALTY of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00) to the department, hereby ASSESSED, to be paid as follows:
 - a. The Respondent shall pay TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) to be paid within 30 days of receipt this ORDER.
 - b. The Respondent shall pay TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) to the division if and only if the Respondent fails to comply with item 1 above, to be paid within 30 days of default.
 - c. The Respondent shall pay TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) to the division if and only if the Respondent fails to comply with item 2 above, to be paid within 30 days of default.


The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written

request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing ORDER is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 8th day of October 2007.


Paul E. Davis, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§69-3-109, 115, allows any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The

petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within thirty (30) days of receipt of this ORDER AND ASSESSMENT, the ORDER AND ASSESSMENT shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the ORDER AND ASSESSMENT will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act.) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made to "Treasurer, State of Tennessee" and shall be sent to the Division of Fiscal Services, Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L & C Annex, 401 Church Street, Nashville, TN 37243. The case number, shown on the first page of this Order

and Assessment, should be included on or with the payment. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor L & C Annex, 401 Church Street, Nashville, TN 37243.